

**MINUTES
of the
FOURTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**October 11, 2011
State Capitol, Room 322
Santa Fe**

The fourth meeting of the Water and Natural Resources Committee was called to order by Senator Phil A. Griego, chair, at 9:10 a.m. on Tuesday, October 11, 2011, in Room 322 of the State Capitol in Santa Fe.

Present

Sen. Phil A. Griego, Chair
Rep. Joseph Cervantes, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia
Sen. Clinton D. Harden, Jr.
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart
Rep. Don L. Tripp

Absent

Rep. William "Bill" J. Gray
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Sen. George K. Munoz
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Rep. James R.J. Strickler

Advisory Members

Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza
Sen. Dede Feldman
Rep. Ben Lujan
Rep. James Roger Madalena
Sen. Cisco McSorley
Sen. Nancy Rodriguez
Sen. Peter Wirth

Sen. Rod Adair
Rep. Candy Spence Ezzell
Sen. Timothy Z. Jennings
Rep. Rodolpho "Rudy" S. Martinez
Rep. Bill B. O'Neill
Sen. John C. Ryan
Rep. Henry Kiki Saavedra

Staff

Jon Boller
Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original file.

Handouts

Handouts and other written testimony can be found in the meeting file and on the Legislative Council Service web site.

Tuesday, October 11

Senator Griego noted that Kim Bannerman would no longer be staffing the committee and would be replaced by Mr. Boller. He also thanked John D'Antonio for his service to the State of New Mexico, pointing out that Mr. D'Antonio had recently announced his resignation as state engineer.

Adjudications Report

Greg Ridgley, deputy chief counsel of the Office of the State Engineer (OSE), provided the committee with an update regarding water rights adjudications in New Mexico. He explained that the OSE has 12 active adjudication suits involving an estimated 72,000 water rights owners. Mr. Ridgley provided the committee with a map showing both completed and active adjudications, as well as data regarding the total acres, adjudicated acres and defendants in pending adjudications.

Mr. Ridgley went on to discuss the OSE's adjudication performance measures, pointing out that legislative targets have been exceeded for the past eight years. He also discussed the number of vacancies in the office, noting that the number of attorneys and hydrographic surveyors has continued to shrink over the past two years, leaving the office with a 30 percent to 35 percent vacancy rate. Mr. Ridgley explained that HB 1110 (2005) funding, which was originally supposed to provide additional funding for the adjudication program, has resulted in a \$500,000 to \$700,000 shortfall in funding the program due to reductions in general fund appropriations elsewhere in the OSE budget. He stressed the need to replace the general fund amounts that were swapped out.

Mr. Ridgley provided the committee with a summary of a report detailing each active adjudication in the state, which he said will be presented next week to a working session with the judges involved in adjudications in the state. He noted that the full report is available through the OSE and that a copy was provided to staff. He also noted that \$15 million had been appropriated to the Indian Water Rights Settlement Fund in the capital outlay bill passed by the legislature during the recent special session.

Questions and comments from the committee included:

- the difference between water rights adjudications and licenses;
- that more than 900 protests were filed in response to well requests in the St. Augustine area, but most protestants did not pay the \$25.00 protest fee, reducing the

- number of formal protests to about 200 (still a new record);
- that adjudicating the middle Rio Grande will require as many resources as the 12 existing adjudications combined, which is why the OSE is currently focused on licensing in that region; and
- that an increase of \$2 million to \$3 million dollars per year is needed to make up for the general fund revenue subtracted from the OSE budget after the increase in funding of the adjudication program was added to the OSE's budget from the HB 1110 appropriation.

Joe M Stell Water Ombudsman Program

Darcy Bushnell of the Utton Transboundary Resources Center provided the committee with an update on the Joe M Stell Water Ombudsman Program, including the program's history and the adjudications in which the program is currently involved. She noted that the program currently works in the lower Rio Grande, San Juan and Aamodt adjudications, but help is available by request for the Chama, Zuni and Pecos adjudications. Ms. Bushnell went on to discuss the various services offered by the program as they relate to specific adjudications, as well as additional services the program could provide given the opportunity and additional staffing. Potential new services include a watershed portal for New Mexico and a national Indian water rights settlement e-repository.

Questions and comments from the committee included:

- San Juan County issues related to junior water rights holders not fully understanding how their water rights are administered;
- that enthusiasm for the program has not diminished, but the funding has;
- that members talk to their respective caucuses to support the restoration of funding to the program; and
- that Judge Gerald Valentine suggested the program several years ago, and he remains a supporter of it.

Levee Conditions in the Middle Rio Grande

Joe Quintana, regional planning manager for the Mid-Region Council of Governments (MRCOG), Subbas Shah and Derrick Lente of the Middle Rio Grande Conservancy District (MRGCD) and Deborah Foley of the U.S. Army Corps of Engineers provided the committee with the third report of the Mid-Rio Grande Levee Task Force. They explained that the task force was created in response to a senate memorial passed in 2009 and provided the committee with an update on efforts to bring levees into compliance with federal regulations. The group also discussed construction of the San Acacia to Bosque del Apache levee system, which is scheduled to begin construction in September 2012. They explained that current law requires that costs of U.S. Army Corps of Engineers levee projects be shared with a local sponsor, noting that the federal cost portion of the project is \$138 million and the local share is \$28 million, to be shared by the MRGCD and the Interstate Stream Commission (ISC). The group went on to explain that the project will be constructed in phases, with the non-federal portion of the first phase, \$2.1 million, due in August 2012.

The group also discussed levees in Albuquerque and Bernalillo, noting that levees in both areas will require either improvements or, in most cases, reconstruction to stay compliant with federal regulations. However, the speakers noted that no funding for either area has been provided yet to initiate projects.

Finally, the group discussed mapping efforts by the Federal Emergency Management Agency (FEMA) as part of a major effort to revise the National Flood Insurance Program. The speakers explained that FEMA is working to revise the process for analyzing and modeling flood hazards, or risk, in the vicinity of levees, which will affect the accreditation of levees.

Questions and comments from the committee included:

- the need for levees in the Albuquerque area;
- that the U.S. Army Corp of Engineers cannot begin levee construction projects unless authorized by Congress;
- that it is likely that FEMA will redraw flood plain boundaries and ask the MRGCD to certify levees;
- that runoff and historical events include what is known as the 100-year flood;
- that support from the committee for a Water Trust Board (WTB) appropriation for levee repair and construction projects would be helpful;
- that the MRGCD's cash balances are about \$20 million, yet it is asking the state for \$2.1 million for the levee project; and
- acreage within MRGCD that is state versus federal land.

Representatives of the MRGCD were asked to come back to the committee in November and give details on its operating costs, funds available for projects and other funding sources.

Dam Safety and Liability Issues

Elaine Pacheco, bureau chief of the Dam Safety Bureau, OSE, provided the committee with an update regarding dam safety issues in New Mexico. She began by outlining the dam classification system adopted by the OSE in 2006, which includes condition ratings and hazard classifications. Ms. Pacheco went on to provide the committee with a list of dams in the state based on their classification, explaining that high-hazard dams are ones whose failure will likely cause loss of human life, while significant and low-hazard classifications pose less risk to human life, but failure could cause economic damage. She also pointed out that there are 111 deficient publicly owned dams classified as having a high hazard potential and that an estimated \$183 million is needed to repair them. Finally, Ms. Pacheco updated the committee on the progress of dam rehabilitation projects in Bloomfield, Cabresto and Springer.

Debbie Hughes and Eddie Vigil of the New Mexico Association of Conservation Districts provided the committee with concerns related to soil and water conservation district (SWCD) payment of insurance premiums to the Risk Management Division (RMD) of the General Services Department. They explained that, as of 2009, each of the 47 districts is required to pay \$1,000 insurance premiums to the RMD, even though many districts have difficulty coming up

with the money to do so. Ms. Hughes and Mr. Vigil went on to note that some question exists about RMD approval of SWCD emergency action plans and subsequent coverage by the RMD in the event of dam failure.

Questions and comments from the committee included:

- the difficulty the OSE has in attracting employees, particularly engineers, to work in dam safety;
- that a dam has yet to fail in New Mexico;
- whether dam safety regulations are being updated similar to safety regulations for levees;
- that a dam in Los Alamos came close to failure over the summer, but ultimately it did not fail; and
- floodplain issues in Hatch.

Deep Wells in Rio West

George King, an engineer with Aperion Companies, provided the committee with testimony regarding a deep well project in Rio West, located west of Rio Rancho. He explained that the company has drilled a 4,000-foot well into an aquifer and plans to treat the water pumped from the well to utility-quality water for sale to anticipated buyers in the region. Mr. King explained that the water, which is somewhat brackish, will be transported from the well via pipeline to a treatment plant, then sold. He also discussed the company's work with the OSE, noting that the company has forged a good working relationship with the agency.

Other representatives from Aperion discussed specific aspects of the operation, including drilling, transmission via pipeline and booster pumps and treatment. They emphasized that safety of both the well site and the public, both in terms of well operations and water quality, is the company's top priority. For example, the company's representatives pointed out that a telescoping well casing protects any other shallower aquifers that it passes through from contamination by the brackish water. They also discussed the multiple technologies running at the treatment site to maximize both the quality and quantity of the water being treated.

Questions and comments from the committee included:

- that byproducts from the water treatment will not present a problem as markets exist for all of the byproducts, including radium, which is used in semiconductors;
- that the company's final plan is to form a utility and sell water to other, smaller utilities;
- that the well is about 4,200 feet deep;
- hydrostatic pressure issues;
- that OSE jurisdiction over the well is limited, but because the water does pass through its jurisdiction, the office will always be involved with the project;
- that eventually, two utility companies will exist: one to drill and export the water and a second to treat it and reform the byproducts;
- that the water will be sold by the gallon, similar to other water utilities;

- that legislation providing the OSE with authority over deep aquifers and wells came after Aperion's initial permit; and
- that upwards of 15 billion acre-feet are believed to be in the aquifer.

Water Trust Board Report

Rick Martinez of the New Mexico Finance Authority (NMFA) provided the committee with an update regarding the WTB. He began by offering a brief explanation of the WTB's history, mission, makeup and ongoing projects, pointing out that the board oversees three separate funds that may be used for statewide water projects: the Water Trust Fund, the Water Project Fund and the Acequia Project Fund. Mr. Martinez went on to explain that while each fund comes from separate, defined sources, all three exist to provide financial assistance for water projects. He went on to indicate that while the board and its funds are mostly focused on water infrastructure projects, legislation passed during the 2005 session dedicates a percentage of all the money that goes into each of the funds toward water rights adjudications.

Next, Mr. Martinez detailed the process used by the board to determine whether or not a project is funded and, if so, at what level. He also provided the committee with an overview of the various projects approved for funding by the board relative to their location in the state. Mr. Martinez noted that the NMFA has also begun to involve federal entities in looking at proposed projects to determine if federal funding might be a better fit for some projects.

Questions and comments from the committee included:

- the difficulty of looking at projects without some kind of cost/benefit analysis for each one; and
- that funds revert back to either the Water Trust Fund or to the Severance Tax Permanent Fund, depending on their source.

Regional Water Planning Status

Angela Bordegaray of the ISC provided the committee with an update on the regional water planning process. She began by emphasizing the importance of water planning, pointing out that plans are a tool for protecting and preserving water, as well as helping to provide a foundation for water management. Ms. Bordegaray went on to review the ISC water planning program, noting that it began in 2003 and was integrated, where possible, in 2008. Finally, Ms. Bordegaray provided the committee with a map indicating the status of water plans throughout the various regions of the state. She noted that several plans have not been updated for several years, and while some regions have been able to update without ISC assistance, others have requested assistance. However, Ms. Bordegaray indicated that funding constraints make it difficult for the ISC to provide much assistance.

Questions and comments from the committee included:

- that lack of funding for water planning further speaks to the need to spend public money carefully;
- the progress made by the ISC in regional water planning since its inception in 2003;

- and
- that while the plans take into account adjudication issues in many regions, there is no formal relationship between the regional water planning process and adjudications.

There being no further business, the committee adjourned at 4:30 p.m.